


Catholic Charities Disabilities Services

Agency Standard and Procedure


Standard Category	Residential
Standard Title	Transitions in Residential Services
Regulations	14 NYCRR §633.12
Original Issue Date	January 10, 2011 & June 4, 2014
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Number of Pages	1
Attachments	OPWDD "Community Placement Procedures" Published: January 1992; revised 2/95
Approved by: Anne M. Ogden, Executive Director	

I. Standard:

Catholic Charities Disabilities Services is committed to a person-centered, equitable and transparent process for planning and implementing changes involving any changes in the living situation of an individual who resides or desires to reside in residence operated by Catholic Charities Disabilities Services.

II. Procedure:

Any plan for residential placement, a move to an alternative residential placement, or a discharge from a residential placement at the request of the individual or his/her parent, guardian, correspondent or advocate, as applicable, or a catholic Charities Disabilities Services initiated discharge, shall be implemented in accordance with OPWDD requirements, as set forth in the OPWDD "Community Placement Procedures" Published: January, 1992 and revised 2/95, which are attached hereto.

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DEFINITIONS

B/DDSO - The local administrative unit of OMRDD that has major responsibility for the planning and development of community residential and other program services. The B/DDSO is also responsible for coordinating the service delivery system within a particular service area, planning with community and provider agencies, and ensuring that specific placement and program plans and provider training programs are implemented. In New York City, this unit is called the Borough Developmental Services Office (BDSO); elsewhere in the State it is called the Developmental Disabilities Services Office (DDSO).

Capable Adult - A person (see definition below) who is 18 years of age or older who is able to understand the nature and implication of various issues such as program planning, treatment, or placement. The assessment of capability in relation to each issue as it arises will be made by the person's Program Planning Team (PPT). This will be done with notice to the Mental Hygiene Legal Service. Capability, as stipulated by the definition, does not mean legal competency; nor does it necessarily relate to a person's capacity to independently handle his or her own financial affairs; nor does it relate to the person's capacity to understand appropriate disclosures regarding proposed professional medical treatment, which must be evaluated independently. Thus a person may be capable of participation in planning for his or her services and programs but still require assistance in the management of financial or other matters. Whenever there is doubt on the part of any other party interested in the welfare of the person as to that person's ability to make decisions, as ascertained by the Program Planning Team, a determination of capability is to be made by an external capability review board designated by the Commissioner. A capable adult person cannot override the authority of a guardian appointed in accordance with the Surrogate Court Procedure Act, or of a conservator, or of a committee.

Discharge - By regulation, most facilities are required to have admission and discharge policies. As used in that context, discharge means the release of a person from the facility and the termination of programs/services at the facility. "Discharge" can be the administrative process that takes place to remove a person's name from the records when that person, who has undergone the placement process, takes up residence in another facility. However, "discharge" also takes place when a residential or day program facility determines, in conformance with its policies/procedures, that it can no longer provide programming/services, even if it has been unable to make provision for alternative programming or services; in this instance, objection to facility initiated discharge can be processed pursuant to section 633.12. In a developmental center, or for a person on conditional release from a developmental center, a person's "discharge" must also comply with Article 29 of the Mental Hygiene Law, thereby terminating a person's "inpatient status" (see developmental center Policy 2.5.1). Community based facilities, whether State or voluntary operated, do not come under the requirements of Article 29 relative to legal admission or discharge and can, therefore, establish their own criteria for discharge, which must be in compliance with the regulations governing that class of facility.

Mental Hygiene Legal Service (MHLS) - An agency of the appellate division of the State Supreme Court established pursuant to Article 47 of the Mental Hygiene Law, and which provides protective legal services, advice, and assistance to developmentally disabled persons.

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Person/Persons - For the purposes of this and other policies related to placement, a child or adult with a diagnosis of developmental disability, who is being served by a state, private, or voluntary facility operated/certified by OMRDD.

POLICY

Pursuant to §633.12 of 14 NYCRR, each adult person receiving services in an OMRDD operated or certified facility in the community, his or her correspondent, and MHLS have the right to object to and appeal the person's program plan, proposed changes thereto, or a proposal initiated by the facility to terminate programs/services by discharging the person from the facility. Please note, however, that the process outlined in this policy is not to be used where a person is discharged, in accordance with administrative procedures, after the person has changed his or her place of residence as a result of placement procedures conducted in conformance with applicable OMRDD policies. Objection to a placement is made in conformance with Policy CP-6, Procedures When There is an Objection to Placement.

When, in conformance with the requirements of the regulations for the class of facility, a person and his or her correspondent are invited to attend a team meeting to review progress and discuss changes to the program plan, they are also to be advised in writing (or other appropriate method) of the right to object to the plan and the procedures for making a formal written objection should informal discussions fail to result in agreement. MHLS is also to be notified of those team meetings to which the person and his or her correspondent have been invited. However, a capable adult can object to any invitations or notifications being made, and may refuse objections or appeals initiated on his or her behalf.

While an objection to programming or facility initiated discharge is pending, a person is to continue to participate in programming agreeable to all parties. Every effort feasible is to be made to maintain a person in at least his or her current level of programming. However, a person's program can be changed while an objection is pending where such is necessary to protect his or her health, safety, or welfare, or the health, safety, or welfare of others.


When a hearing officer or the Commissioner upholds an objection and recommends a resolution to the dispute, and no further appeal is made, the chief executive officer is to make every feasible effort, within existing resources, to comply with the recommendation(s). If the objecting party is of the opinion that the efforts to meet compliance are inadequate, this may be brought to the attention of the Commissioner.

RESPONSIBILITY

Coordinator

PROCEDURE

1. Ensures that, in conformance with the regulations for the class of facility, when a person's program plan is periodically reviewed or when changes are proposed to the program plan, the person's and

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his or her correspondent are advised of the review and of their right to participate in the planning process, and of their right to object to the plan, proposed changes, or facility initiated discharge. Provides such notification in writing or such other means as is necessary to ensure comprehension. As part of this notification:

- a. Provides the name, office address, and telephone number of the B/DDSO director to whom formal written objections are to be addressed.
- b. Describes the role of MHLS as an advocate for persons with developmental disabilities.
- c. For Willowbrook Class members, states availability of the Willowbrook Consumer Advisory Board to act on a person's behalf when designated by the correspondent, if the correspondent cannot exercise this right (e.g., because of age, illness, out-of-state residence, etc.).

2. Attempts to resolve objections on an informal basis. Notes objections and strategies for resolution in the person's program plan.

Chief Executive Officer


3. Sends letter of confirmation to objecting party with results of attempts to resolve objections on an informal basis. If unable to resolve objections, explains to the person, correspondent, or MHLS the right to invoke the formal written objection and appeal procedures set forth below.

Person Receiving
Services, or Other
Party Objecting

4. Conveys objection(s) and request for a hearing in writing to the B/DDSO director.

B/DDSO Director

5. Within five days, arranges for a hearing to be held before a hearing officer, with at least ten (10) days advance notice of the hearing date to those entitled to be involved. The notice is to be sent by certified mail, return receipt requested, to the correspondent and MHLS. The person and his or her coordinator are to receive copies of the same notice. All parties are to receive copies of the written objection.


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Person Receiving
 Services,
 Correspondent,
 Chief Executive,
 Officer, Coordinator,
 Appropriate Staff,
 MHLS

Hearing Officer

B/DDSO Director

6. Are all entitled to appear at the scheduled hearing and present oral or written statements, documents, or testimony in support of their position relative to the objection. In accordance with facility policy, the coordinator or other designated staff person makes arrangements for appropriate staff to attend and participate in the hearing.
7. Conducts the hearing and ensures receipt of all material and relevant statements, documents and testimony.
8. Ensures that testimony and statements are recorded, either by a stenographer or electronically.
9. Determines, from everything submitted by the parties at the hearing, if the objection is sustainable. In making this determination, considers, among other things, the person's program and service needs; whether services and programs currently received by the person meet those needs; whether other programs and services, more appropriate to meet the person's needs, are available within existing resources; and the efforts by staff to plan for and implement the provision of more appropriate programs and services within the current location and/or elsewhere.
10. Sustains the objection if, after weighing the above factors and any other relevant considerations advanced by the parties, he or she finds that the plan or proposed changes thereto, including facility initiated proposals to discharge, are not reasonable under the circumstances.
11. Prepares a written decision within fourteen (14) days of the hearing, setting forth findings made and reasons that support said findings. Where an objection is sustained, recommends resolution to the dispute. Forwards decision to the B/DDSO director.
12. Sends the hearing officer's written decision, by certified mail, return receipt requested, to the chief executive officer, correspondent and MHLS. Includes a cover letter which explains that any party dissatisfied with the decision can appeal, within ten (10) days of receipt of the decision, to the Commissioner (including the

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Commissioner's name and address). Sends a copy of the decision to the person and his or her coordinator.

Chief Executive Officer

13. Where the hearing officer's decision sustains the objecting party's objection and recommends a resolution to the dispute, and no appeal is taken, attempts to carry out the recommended resolution in a timely fashion and within available resources.

Parties to the Proceeding


14. May appeal the hearing officer's decision by sending a written letter of appeal to the Commissioner within ten (10) days of receipt of the decision.

Commissioner

15. May, at his or her discretion, send the matter back to the hearing officer for further review.
16. Upon receipt of letter of appeal, reviews evidence presented at hearing and, based on such review, renders a written decision on issues presented within fourteen (14) days of receipt of letter of appeal.

Objecting Party

17. Sends written decision to all parties involved in the proceedings, by certified mail, return receipt requested.
18. May seek judicial review as provided by the laws of New York State.

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**NOTICE OF RIGHT TO OBJECT TO A PERSON'S PROGRAM PLAN,
PROPOSED CHANGES THERETO, OR PROPOSED DISCHARGE**

(This is a suggested format. If a person is not a Willowbrook Class member,
that portion of the notice referring to Willowbrook Class members is to be omitted.)

TO:

Date _____

FROM:

SUBJECT: **RIGHT TO OBJECT TO A PROGRAM PLAN, PROPOSED CHANGES THERETO,
OR PROPOSED DISCHARGE**

Enclosed is a copy of _____ (person's name) 's program plan incorporating (proposed changes thereto) (proposed discharge). If, after you have read this material you do not agree with the services, care, or treatment reflected in the plan, you have a right to object. You should feel free to contact the coordinator of the person's program plan if you have any questions about it. He or she will be happy to answer questions and discuss the plan, even if you do not have a specific objection, or help you resolve your differences of opinion. OMRDD has established specific procedures to make sure that all formal written objections and appeals are given fair consideration. Basically, this is a two step process:

1. A formal written objection is submitted to the B/DDSO director designated below.
2. An appeal is made to the Commissioner if the decision on your objection is unsatisfactory to you.

If you do not agree with the services, care, or treatment reflected in the program plan, the proposed changes thereto, or proposed discharge, and you wish to make a formal written objection, you should immediately contact:

_____ (insert name of B/DDSO director)
 _____ (address)
 _____ (phone number)

If you are elderly, ill, or living outside New York State, you are free to ask a specific advocacy group to a lawyer to act in your behalf in this appeal process.

*As _____ (person's name) is a member of the Willowbrook Class (that is, he or she was a resident at the Willowbrook Developmental Center on March 17, 1972), you may ask the Willowbrook Consumer Advisory Board to act in your behalf. If you are eligible and wish to designate the Consumer Advisory Board to act for you, you should immediately contact:

Willowbrook Consumer Advisory Board
 Staten Island B/DDSO
 1050 Forrest Hill Rd.
 Staten Island, NY 10314
 Telephone: (718) 983-5206